IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 14TH MARCH 2007 / 23RD PHALGUNA 1928

CRP.No. 40 OF 1998(E)

TLB.573/73/HOS. DATED 18.11.1997 OF TALUK LAND BOARD, HOSDRUG

REVN. PETITIONERS:

1. K. NARAYANAN, S/O. KOTTAN,
KALICHANADUKKAM.

2. KODAKUNNEL GEORGE, S/O. JOSEPH, KALICHANADUKAM.

3. DR.. M.V. KUNHAMBU, S/O. P. KRISHNAN,
THAYANNOOR VILLAGE, KOSDURG.

BY ADV. SRI.M.RAMESH CHANDER
SRI.M.VIJAYAKUMAR

RESPONDENTS:

1. TALUK LAND BOARD, HOSDURG.

2. STATE OF KERALA, REPRESENTED BY SECRETARY
TO REVENUE DEPARTMENT, TRIVANDRUM.

3. MADHAVANKUTTY, S/O.. KUNJIKOMAN NAIR,
KALYANAVALAPPU, KALICHANADUKAM, BELOOR,
HOSDURG.

4. VIJAYAKUMAR, S/O. KUNJIKOMAN NAIR, DO. DO.

5. SMT. A. GEETHA, D/O. KUNJIKOMAN NAIR, DO. DO.

6. SRI. A. VENUGOPALAN, S/O.. KUNJIKOMAN NAIR, DO. DO.

R3 & R4 TO R6 BY ADV. SRI.V.RAJGOPAL
R1 & R2 BY GOVERNMENT PLEADER SRI. NOBLE MATHEW.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P. NO. 40/1998

ORDER ON CMP NO. 95/1998 IN C.R.P. NO. 40/1998

// DISMISSED //

14..3.2007. SD/-
P.R. RAMAN, JUDGE.

// TRUE COPY //

P.S. TO JUDGE.

knc/-

P.R. RAMAN

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C.R.P. NO. 40 OF 1998

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DATED THIS, THE 14TH DAY OF MARCH, 2007.

O R D E R

Petitioners are stated to be tenants claiming exclusion of their land from the ceiling case of the declarant in TLB 573/73 on the file of the Taluk Land Board, Hosdurg. Petitioners 1 and 2 claimed leasehold right of 4 Acres of land each in R.S. 448/1A. Likewise, third petitioner sought to exclude 1.05 Acres of land in the same survey number. Earlier, the Taluk Land Board accepted their case and the total extent of 9.10 Acres were excluded from the ceiling case of the declarant whose legal representatives are arrayed as respondents 3 to 6 herein.

2. The order of the Taluk Land Board was challenged before this Court by the State in C.R.P. 1667/1990. The prime contention of the State was that the Land Board excluded the land said to be in possession and enjoyment of the petitioners solely based on the report of the Authorized Officer which report did not have any basis. On the other hand, on behalf of the petitioners, it was contended that they are persons entitled to fixity of tenure as they have also obtained certificate of purchase issued by the Land

Tribunal, the authority competent to issue such certificate as per the provisions of the Kerala Land Reforms Act and as such their tenancy is evidenced by such certificate of purchase issued in their favour and that such certificates cannot be brushed aside so lightly and the finding of the Taluk Land Board accepting their claims is therefore just and proper. This court, after referring to the decision in **Mathew v. Taluk Land Board** (1979 KLT 601) and after referring to the observations of the apex court as extracted in the order, held that an opportunity is to be given to the other party to put forward their case challenging that the purchase certificate is vitiated by fraud. Therefore, it was held to be fit and proper that the Land Board be asked to dispose of the objection raised by the State and to come to its own conclusion in the light of what has been stated in the order and what has been stated by the apex court, which is extracted in the judgment.

3. Pursuant to the remand made by this court, the Land Board, after considering the materials so produced and after affording opportunities to the parties, held that the tenancy claimed and as put forth by the petitioners cannot be accepted as they did not prove possession prior to 1.4.1964 and dismissed the claim as put forth by them against which the present revision is filed.

4. Learned counsel appearing for the revision petitioners would contend that the Taluk Land Board did not consider the materials produced in the case in the proper perspective and that the Taluk Land Board ought to have accepted the purchase certificate in the absence of any vitiating factors attached thereto. In this regard, it was also contended that the Land Tribunal has followed the due procedure as prescribed by law before issuing the certificate of purchase and as such there is no semblance of any fraud played in the matter, in which event, the Land Board is bound by such purchase certificate issued by another authority under the same statute. Reliance was also placed to the proviso to Section 85 of the Kerala Land Reforms Act to contend that the land holder was under the bona fide belief that possession in respect of the land in question is outstanding with the tenants, which fact is also proved by the purchase certificate and as such, while calculating the extent of land to be surrendered, the land actually in possession and enjoyment of the petitioners should not have been taken into account. Per contra, the learned Government Pleader appearing for the State would contend that as per the decision of the apex court , if the decision of the Land Tribunal is found to be inaccurate or obtained by fraud, it is open to the Taluk Land Board to reject such purchase certificate and denovo consider the evidence on record and come to its own conclusion as

to whether petitioners are tenants entitled to fixity of tenure and if only such materials produced evidences their tenancy right over the land in question that such land is liable to be excluded from the ceiling case of the declarant. It is also contended that as per the proviso to Section 85 of the Act, it is not a mere belief of the landlord that matters; but it must be a bona fide belief. It could be a bona fide belief, if only there is some evidence as on the date on which the Kerala Land Reforms Act came into force and that one could legitimately expect that these lands will be purchased by persons in possession or occupation of the same based on such legal right which is totally lacking in this case.

5. Heard both sides. As regards the first petitioner, he had produced a 'porappad receipt' dated 15.9.1964 and also a basic tax receipt dated 31.5.1972 in addition to the purchase certificate issued by the Land Tribunal in support of his claim for tenancy right. But the Taluk Land Board went on to hold that if the claimant had a 'porappad receipt' dated 15.9.1964 he would have certainly produce the same before the Land Tribunal for the purpose of proving the tenancy especially when he had no other records in support of his claim. But from the certificate of purchase issued in favour of the first petitioner, no documents were produced to prove his tenancy and since the first petitioner did not produce the 'porappad receipt' before the

Land Tribunal, it has to be presumed that the said 'porappad receipt is a fabricated one. But the Land Board failed to see that the purchase certificate was issued based on an application filed in 'J' Form which is a joint application to be submitted both by the landlord and the tenant and so this was not a case contested by the landlord; but accepted the claim of the tenant for fixity of tenure. When the only contestant being the landlord in the matter of purchase of landlord's right and when a 'J' Form is filed before the Land Tribunal, there arise no occasion for the tenant to produce further proof to substantiate his claim in the absence of any dispute thereto. Therefore, the non production of such proof before the Tribunal as such may not be a reason to say that the document produced is a fabricated one. Further, the 'porappad receipt' produced is dated 15.9.1964. The parent Act came into force with effect from 1.4.1964. If as a matter of fact, this was a fabricated document, nothing prevented the parties from issuing a receipt prior to 1.4.1964 which would lay a better claim in support of the first petitioner. Further, 'porappad receipt' is issued in the hand writing of the landlord. The local Village Officer who inspected the property has also submitted a report regarding the actual possession of the property. Tax receipt is also produced. It is in addition to this that purchase certificate issued by the Tribunal is also in evidence before the Tribunal. Therefore,

the Taluk Land Board ought to have considered all these pieces of evidence together into consideration and arrived at a conclusion as to whether the claim of tenancy is proved or not. The rejection of receipt so issued as a fabricated one is clearly wrong. The matter requires a further look by the Taluk Land Board.

6. As regards the case of the second petitioner also, he has produced a 'porappad receipt dated 1141 Kumbham 11, M.E., corresponding to February, 1966 and B.T. receipt dated 31.7.1973 besides the purchase certificate issued by the Land Tribunal and another certificate issued by the Executive Officer of the Panchayat. He has also given oral evidence in support of his case. According to the Land Board, he did not produce any valid evidence to prove the genuineness of the porappad receipt. Whether the porappad receipt is genuine or not has to be gathered from all the attendant circumstances in the case. A further proof of genuineness is not required to be produced. The question is whether it is genuine or not. Unless it is shown to be fabricated on cogent reasons, such receipt cannot be rejected as fabricated. In other words, a document produced can be rejected as fabricated only if there is concrete proof regarding the same. The burden to show that this is a fabricated document lies on the Revenue who opposes the certificate. Therefore, the Taluk Land Board was clearly

wrong in asking for further proof to show that the said certificate is genuine and casting the burden wrongly on the petitioner.

7. As regards the third petitioner, however, the documents produced are of the year 1978 and later, which will in no way prove actual possession of the property prior to 1.4.1964. The purchase certificate by itself may not be conclusive; especially since the purchase certificate was issued in a joint application made by the landlord and the tenant. In the absence of any proof produced before the Land Tribunal, there was no occasion for an adjudication regarding the question of tenancy and in such circumstances and in the light of the previous judgment passed by this Court in the earlier Civil Revision Petition, the third petitioner ought to have adduced sufficient evidence to show actual possession of the property prior to 1.4.1964 to substantiate his contention that he is a tenant entitled to fixity of tenure under the Kerala Land Reforms Act. The order of the Tribunal, as far as the third petitioner is concerned, cannot be assailed on any valid ground. Therefore, the third petitioner's claim for exclusion of 1.05 Acres of land claiming tenancy right over the same, having been not substantiated, I find no reason to interfere with the said finding.

8. In the result, the matter is remanded to the Taluk Land Board for fresh consideration in accordance with law as respect the claim put forth by

petitioners 1 and 2 alone. As regards the order passed by the Board in the case of the third petitioner, the order is confirmed.

The Civil Revision Petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

knc/-

P.R. RAMAN, J.
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C.R.P. NO. 40/1998
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O R D E R

DATED: 14.3.2007